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13 Attorneys for Defendant  
 14 ALLSTATE INSURANCE COMPANY

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17 SAN FRANCISCO DIVISION

18 MICHELLE FANUCCI,

No. CV-082151-JSW

19 Plaintiff,

JOINT CASE MANAGEMENT  
 STATEMENT AND [PROPOSED]  
 ORDER

20 vs.  
 21 ALLSTATE INSURANCE COMPANY,  
 MICHAEL B. BALDWIN, and DOES 1  
 to 50,

Date: August 22, 2008  
 Time: 1:30 p.m.  
 Place: Courtroom 2, 17<sup>th</sup> Floor  
 Before: Hon. Jeffrey S. White

22 Defendants.

23  
 Pursuant to Federal Rule of Civil Procedure 26(f) and Civil L.R. 16-9(a), the parties submit  
 24 this Joint Case Management Statement and Proposed Order with respect to the Case  
 Management Conference set for August 22, 2008, and request that the Court adopt it as the Case  
 25 Management Order.

1       **1. Jurisdiction and Service:**

2       Plaintiffs filed this action in Napa County Superior Court. Allstate Insurance Company  
3 removed it to this Court pursuant to 28 U.S.C. sections 1332, 1441(a), and 1446. This Court has  
4 original jurisdiction over the Superior Court Action under 28 U.S.C section 1332, as plaintiff  
5 and Allstate are citizens of different states and the amount in controversy exceeds \$75,000,  
6 exclusive of interest and costs.

7       All parties have been served.

8       **2. Facts:**

9       Allstate insured plaintiff Michelle Fanucci under her father's auto policy, which provided  
10 \$250,000 in underinsured motorist coverage. Ms. Fanucci, a pedestrian, was struck by an  
11 automobile on January 18, 1997. The at-fault driver carried \$100,000 in liability coverage,  
12 which was paid to Ms. Fanucci. She then demanded the balance of her underinsured motorist  
13 coverage from Allstate. Because Ms. Fanucci and Allstate could not agree on the value of her  
14 claim, the dispute was submitted to arbitration, at which Ms. Fanucci was awarded  
15 \$1,418,014.07. Following the arbitration, Allstate paid its \$150,000 net policy limit under Ms.  
16 Fanucci's auto policy. She now demands that Allstate pay an additional \$1 million under her  
17 father's personal umbrella policy with Allstate.

18       Ms. Fanucci alleges Allstate is estopped from denying underinsured motorist coverage  
19 under the umbrella policy because Ms. Fanucci's father asked for \$1 million in underinsured  
20 coverage and Allstate's agent, Michael Baldwin, allegedly advised her father in 1987 that the  
21 umbrella policy would supplement each of the underlying auto coverages. Finally, Ms. Fanucci  
22 asserts bad faith delay in payment of the \$150,000, claiming Allstate should not have required  
23 her to go through arbitration to recover the underinsured motorist benefits.

24       On the basis of these allegations, Ms. Fanucci asserts claims for declaratory relief, breach  
25 of contact, breach of the implied covenant of good faith and fair dealing, negligence and  
26 negligent misrepresentation. She seeks special damages totaling \$1,035,257.51, general and  
27 punitive damages, attorneys' fees, prejudgment interest and costs of suit.

1       **3. Legal Issues:**

- 2       1. Is Allstate estopped from disputing coverage under its umbrella policy  
3                  based on the conduct of its agent?  
4       2. Can coverage be created by estoppel?  
5       3. Does the statute of limitations bar plaintiff's claim?  
6       4. Was Mr. Baldwin negligent?  
7       5. Did Mr. Baldwin breach a duty of care?

8       **4. Motions:**

9       Allstate may move for summary judgment or partial summary judgment.

10      **5. Amendment of Pleadings:**

11      None anticipated.

12      **6. Evidence Preservation:**

13      The parties have taken appropriate steps to ensure the preservation of evidence.

14      **7. Disclosures:**

15      The parties will serve their initial disclosures on or before August 15, 2008.

16      **8. Discovery:**

17      The parties plan to conduct discovery regarding all allegations in the complaint. The  
18      parties anticipate propounding written discovery and deposing the parties and other relevant  
19      witnesses. The parties do not believe any deviation from the discovery guidelines set forth in  
20      the Federal Rules of Civil Procedure is necessary at this time.

21      **9. Related Cases:**

22      There are no pending related cases.

23      **10     Relief:**

24      Plaintiffs' Statement

25      Plaintiff seeks (1) a declaration that Allstate is estopped to deny underinsured motorist  
26      coverage under the automobile policy, (2) special damages \$1,035,257.51, (3) general damages,  
27      (4) attorneys fees, and (5) punitive damages.

1       Defendant's Statement

2       Allstate seeks judgment in its favor and recovery of its costs.

3       **11.     Settlement and ADR:**

4       The parties have not filed a "Stipulation and Proposed Order" selecting an ADR process  
5       but jointly request assignment to the Early Neutral Evaluation program.

6       **12.     Consent to Magistrate:**

7       The parties consent to the assignment of this action to Magistrate Judge Edward Chen for  
8       all purposes.

9       **13     Other references:**

10      The parties do not believe any other reference is necessary at this time.

11      **14.     Narrowing of Issues:**

12      The parties believe it is premature to narrow the issues through stipulation at this time.  
13      However, as discovery progresses, the parties will re-evaluate this issue.

14      **15     Scheduling:**

15      The parties propose the following schedule for discovery, motions and trial:

|   |                   |
|---|-------------------|
| 16      Exchange of Initial Disclosure:               | August 15, 2008   |
| 17      Non-expert discovery cut-off:                 | December 15, 2008 |
| 18      FRCP 26(a)(2) expert disclosures:             | December 22, 2008 |
| 19      FRCP 26(a)(2) rebuttal disclosures:           | January 12, 2009  |
| 20      Expert discovery cut-off:                     | February 6, 2009  |
| 21      Dispositive pre-trial motion hearing cut-off: | March 15, 2009    |
| 22      Pretrial conference statement:                | April 22, 2009    |
| 23      Pretrial conference:                          | April 29, 2009    |

24      **16.     Trial:**

25      The parties request a trial date of May 11, 2009.

26      **17     Disclosure of Non-party Interested Entities or Persons:**

27      Allstate is not aware of any interested parties required to be disclosed pursuant to Northern

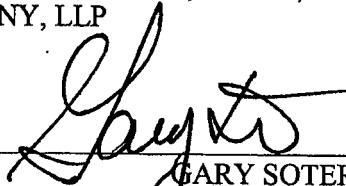
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1 District Local Rule 3-16.

2  
3 Dated: July 14, 2008

4 PEARSON, SIMON, SOTER, WARSHAW &  
5 PENNY, LLP

6 By



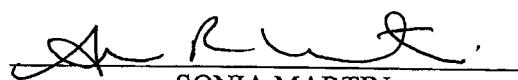
GARY SOTER

7 Attorneys for Plaintiff  
8 MICHELLE FANUCCI

9  
10 Dated: July 14, 2008

11 SONNENSCHEIN NATH & ROSENTHAL LLP

12 By



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**[PROPOSED] CASE MANAGEMENT ORDER**

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4 The case Management Statement and Proposed Order is hereby adopted by the Court as  
5 the Case Management Order for the case and the parties are ordered to comply with this Order.

6 In addition, the Court orders:  
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12 Dated: \_\_\_\_\_

13 Hon. Jeffrey S. White  
14 U.S. District Court Judge  
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